

NEBRASKA ADMINISTRATIVE CODE

Title 68 - DEPARTMENT OF CORRECTIONAL SERVICES

Chapter 6 - INMATE DISCIPLINE

001 Applicability. The provisions of this rule shall apply to all facilities operated by the Department of Correctional Services.

002 Departmental Policy. It is the policy of the Department that the Chief Executive Officer of each facility maintain a clearly defined disciplinary procedure which complies with the provisions of this Rule and is consistent with guidelines issued by the Director. Such a disciplinary procedure shall be designed to contribute to the efficient operation of the facility and to be conducive to the successful re-socialization of the inmate confined therein.

003 Disciplinary Principles. In every disciplinary action taken throughout the Department, the following principles shall apply.

003.01 Disciplinary action shall be used to regulate a committed inmate's behavior within acceptable limits. The reason for each individual disciplinary action shall be to punish the inmate for his/her misconduct and to deter that inmate and other inmates from engaging in similar misconduct in the future. Each disciplinary action imposed must be proportionate to the seriousness of the inmate's misconduct, giving consideration to all aggravating and mitigating circumstances and prior offenses for the same or similar behavior.

003.02 The behavior of inmates committed to the custody of the Department shall be controlled in a completely impartial and consistent manner.

003.03 Disciplinary action shall not be capricious, retaliatory or revengeful.

003.04 Corporal punishment of any kind is strictly prohibited.

003.05 Records of all disciplinary action shall be kept.

004 Notice of Disciplinary Procedures. It shall be the duty of the Chief Executive Officer to give inmates written notice of the Department's disciplinary procedures. Such information may be given either at the time of admission to the facility or during reception and orientation. The dissemination of such information may be in the form of printed materials or pamphlets or in any other form which may be kept by the inmate for ready reference.

005 Facility Disciplinary Committee or Hearing Officer. The Chief Executive Officer of each adult facility shall establish one or more

disciplinary committees. A single hearing officer may be appointed in lieu of a "committee" and where the term "committee" is used herein it shall refer to such individual hearing officers as well as committees composed of two or more members. To the extent possible, a person representing the treatment or counseling staff of the facility shall participate as a member of the facility disciplinary committees. The Chief Executive officer may also appoint substitutes for members of the committees, and may appoint committees in the event of a serious disturbance or other emergency. In the interest of impartiality, no member shall maintain a position on a disciplinary committee during a hearing if that member has first-hand knowledge of the charges brought against the accused inmate, either as an eyewitness or as the reporting officer or investigating officer. However, nothing herein shall prevent a staff member from sitting as a member of a disciplinary committee when the incident is so widely witnessed that virtually every staff member has witnessed it in whole or in part. Records of disciplinary proceedings shall be made and shall be maintained in the inmate's file jacket in the records center unless dismissed on appeal.

006 Disciplinary Procedures. No inmate shall be subject to disciplinary detention, loss of good time, or having the Department recommend any retardation or rescission of a parole grant until there has been a complete fact-finding hearing before a facility disciplinary committee. Such hearings shall be consistent with the appropriate provisions of these rules and regulations and Nebraska statutes and shall thoroughly comply with the following guidelines.

006.01 Misconduct Reports. If an employee witnesses or has a reasonable belief that an infraction of the Code of Offenses has been committed by an inmate, the employee shall prepare a written report to be filed with the Chief Executive Officer of the facility or his/her designee, within seventy-two hours of the occurrence of such infraction or the discovery of it. Such report shall be placed in the files of the facility, and logged in facility records. The report shall be logged within 24 hours after the report is filed, which commences the investigation.

006.02 Pre-hearing Detention. Inmates charged with a rule violation may be held in immediate segregation status. The inmate's status shall be reviewed within seventy-two hours by the Chief Executive Officer or designee.

006.03 Investigatory Hearing. An investigating officer(s) shall be designated by the CEO of each facility. The investigating officer shall not be the employee reporting or involved in the particular incident in question. Within eight calendar days after the infraction or the discovery of it, an investigating officer will meet with the accused inmate, give the inmate written notice of the allegations, an opportunity to make a statement about the allegations, an opportunity to request representation and/or witnesses at the disciplinary hearing, and an opportunity to request assistance in the investigation of the facts leading to the charges, to enable the inmate to muster evidence in the inmate's defense. The investigating officer shall interview the inmate and other persons with relevant knowledge of the circumstances giving rise to the misconduct report in an effort to determine whether or not the misconduct report is supported by evidence. If an investigating officer does not find evidence that an offense was committed by an inmate, the investigating officer will recommend that a disciplinary committee dismiss the action. If the investigating officer does find some evidence that an offense was committed, he or she will forward the misconduct report to the disciplinary committee for hearing. The investigation should be completed promptly unless exceptional circumstances necessitate a delay.

006.04 (No text)

006.05 Inmate Notice of Charges. No less than twenty-four hours before the hearing is scheduled to be held, each inmate charged with an offense shall be given written notice of the charge or charges (under DCS Rule 5). The inmate may waive this twenty-four hour requirement in writing.

006.06 Hearings. Inmates charged with an offense shall have an opportunity to appear before and address a facility disciplinary committee unless excluded through behavior or unless they waive this right in writing. Inmates may be excluded during the testimony of any inmate whose testimony must be given in confidence. Reasons for the inmate's absence or exclusion must be documented.

006.07 Presentation of Witnesses. A facility disciplinary committee may also summon to testify any witnesses or other persons with relevant information of the incident. The inmate charged shall be allowed to call witnesses with relevant knowledge and present relevant documentary evidence in the inmate's defense when permitting the inmate to do so will not be unduly hazardous to institutional safety or correctional goals. Requests for witnesses must be made at the time of the Investigatory hearing, or must be in writing and received by appropriate staff at least 24 hours in advance of the hearing. A facility disciplinary committee shall state its reasons for refusing to call a witness in writing. The institution shall grant witnesses denied by the committee the opportunity to make a written statement for the committee. The refusal of a witness to make a written statement shall be documented.

006.08 Written Statement of Decision. The inmate charged shall be given a written statement of the decision by a facility disciplinary committee. This statement shall include the basis for the decision and any disciplinary action, to be imposed.

006.09 Change of Work, Education, or Program Assignment. A change in work, education, or other program assignment shall not be used for disciplinary purposes.

006.10 Preparation of Inmate's Defense. The inmate charged shall have an adequate opportunity to prepare a defense. Such opportunity shall include the right to assistance and advice in preparing and presenting a defense from any resident in general population or staff member at the facility where the hearing is held. The inmate or staff member may serve only in an advisory capacity for the inmate so charged. Instances in which this counsel-substitute will be provided include but are not limited to situations in which the inmate is illiterate or the issues are so complex that it is unlikely the inmate can obtain and present the evidence necessary for adequate comprehension of the case. No inmate or staff member shall be recruited to serve in such an advisory capacity involuntarily.

006.11 Waiver. The inmate may waive or consent to the denial of any of the procedures mentioned in Rule 6, but only if such waiver or consent is voluntarily made. Waivers and consents shall be reduced to writing and reviewed by the Chief Executive Officer or designee.

006.12 Continuances. The chairperson of a disciplinary committee may grant a continuance of the disciplinary hearing. A request for a continuance may be made by either institutional staff involved in the discipline process or the inmate. A continuance may be granted only for good cause shown for a reasonable period of time, and shall be made in writing and made part of the disciplinary record.

007 Disposition of Disciplinary Charges. The disciplinary committees of each facility shall conduct hearings, render decisions, and impose appropriate penalties for violations of the Code of Offenses, with the review and approval of the Chief Executive Officer or designee. The Chief Executive Officer may modify or decrease the sanctions imposed by the disciplinary committee, but may not increase the severity of those sanctions. The Chief Executive Officer's responsibilities under this paragraph may not be delegated to anyone who served as a member of the disciplinary committee hearing the case to be reviewed. The committees may cause investigations to be conducted, but in the interest of impartiality, should refrain from conducting such investigations themselves. If a committee finds that a person has committed an act prohibited by the Code of Offenses, such findings must be based upon information obtained in the hearing process, including staff reports, inmate's statements, and evidence derived from witnesses and documents.

008 Loss of Good Time and Disciplinary Segregation. Disciplinary committees may impose the following penalties for violations of the Code of Offenses if the committee finds the violations to be serious or flagrant.

008.01 Class I offenses (those preceded by a Roman Numeral I in the Code of Offenses).

008.01A Confinement in disciplinary segregation for a definite period of time not exceeding sixty days, and/or

008.01B Loss of good time not exceeding one year (not restorable) for violations involving assault or injury to a person. Loss of good time not exceeding three months for violations not involving assault or injury to a person.

008.02 Class II offenses (those preceded by a Roman Numeral II in the Code of Offenses).

008.02A Confinement in disciplinary segregation for a definite period of time not exceeding forty-five days, and/or

008.02B Loss of good time not exceeding one month and fifteen days.

008.03 Class III offenses (those preceded by a Roman Numeral III in the Code of Offenses).

008.03A Confinement in disciplinary segregation for a definite period of time not exceeding thirty days, and/or

008.03B Loss of good time not exceeding one month.

The maximum sanction involving disciplinary segregation shall not exceed sixty days for all violations arising out of one incident. The maximum sanction involving loss of restorable good time shall not exceed three months for all charges arising out of one incident except as otherwise provided in Nebraska Statutes.

009 Other Penalties. In addition to the penalties set out in Paragraph 9, above, a disciplinary committee may impose the following penalties. A combination of penalties may be imposed for each offense contained in the Code of Offenses.

009.01 Extra Duty. An inmate may be assigned additional work duties without pay during a period of time not to exceed thirty days. Work assignments need not be in the area of the inmate's present work assignment. Extra duty shall not exceed 120 hours for all violations arising out of one incident.

009.02 Restriction. An inmate may be restricted from any correctional facility activities for disciplinary reasons except the recognized worship activity for his/her religious faith group, dining hall, designated group or individual therapy, and school, for a period of time not to exceed ninety days for all violations arising out of one incident. Restrictions on clothing, bedding, mail, visitations, use of toilets, wash bowls, scheduled showers or facilities and materials needed for access to the courts shall be imposed only for abuse of such privileges or facilities.

009.03 Reprimand and Warning. An inmate may be warned verbally or in writing that further violations of the Code of Offenses may result in more severe punishment.

009.04 Restitution. An inmate may be required to make restitution for the actual value of property belonging to the state or any other person intentionally or recklessly destroyed, the actual value of damage or loss incurred as a result of unauthorized use of property belonging to the state or any other person, the actual cost to the state for injuries or other damages caused by intentional acts of the inmate, and for the reasonable costs incurred by the State when returning the inmate to the correctional facility after an escape. Before restitution can be ordered for disciplinary reasons, the inmate must be found guilty of a pertinent rule violation, and a disciplinary committee must determine the amount of restitution based on substantial evidence introduced at a disciplinary committee hearing. Nothing herein shall preclude recovery for the actual value of state property intentionally or recklessly destroyed by such person during his or her commitment and the reasonable costs incurred in returning such person to the facility to which he or she is committed in the event of his or her escape. Restitution monies may be taken only from the inmate's institutional account by the Chief Executive Officer of the institution. A hearing by a disciplinary committee on the issue of restitution may be conducted at the same time as the hearing on the disciplinary infraction or at a later date.

010 Referral to Classification Authority for Reassignment. The disciplinary committee of each facility may, in addition to any penalties imposed, refer individual cases to the appropriate classification authority for classification reassignment. Referral to the appropriate classification authority shall include specific recommendations for classification action which may include, but not be limited to the following:

010.01 Custody Demotion.

010.02 Intensive Management.

010.03 Transfer.

010.04 Administrative Confinement.

011 Criminal Offenses. It shall not be necessary to await the outcome of any criminal prosecution and trial before taking disciplinary action.

012 Records. An accused inmate's institutional file shall be expunged of a misconduct report or parts thereof when the disciplinary committee or Appeals Board dismisses the charge or charges or when the district court overturns a disciplinary action.

013 Appeals Process. The accused inmate shall be advised of the right of appeal at the same time he or she is notified of a disciplinary committee's decision. Such appeals must be in writing and be explicit as to the charge to be reviewed, the date, and the reason why the charge should be reviewed. The inmate shall notify designated unit staff of any intention to appeal and provide the unit staff with a written statement of the inmate's reasons for the appeal within fifteen days after receiving notice of a disciplinary committee's decision.

Within ten days after receiving the inmate's notification of an intention to appeal, the unit staff will forward to the Appeals Board Coordinator a complete copy of the disciplinary committee record, including misconduct reports, disciplinary actions sheets, and other relevant documents, along with the inmate's written statement of appeal. The Appeals Board will render a decision based on this evidence. Due process, findings of fact, evidence relied upon, and impartiality of the decision-making process will be reviewed, analyzed and incorporated in the Appeals Board's decision. The Appeals Board Coordinator will notify the inmate of the decision by forwarding to the inmate a copy of the written disposition within twenty-five days after the Coordinator's receipt of the appeal with all pertinent information from the case manager.

014 Disciplinary Segregation. Disciplinary segregation is the status of confinement in a cell or other control unit facility separated from general population members insofar as practicable, as a result of a hearing on charges of misconduct pursuant to this Rule. Inmates housed in disciplinary segregation will have significantly fewer privileges than those housed in administrative detention.

015 Solitary Confinement. Solitary confinement is the status of confinement in an individual cell having solid, soundproof doors, and depriving the inmate of all visual and auditory contact with other persons. No inmate shall be placed in solitary confinement for disciplinary reasons. This provision does not apply to segregation or isolation of persons for purposes of institutional control.

016 Room Restriction. Room restriction is the status of being restricted from certain privileges normally afforded members of the general inmate population. It does not consist of total separation from the general population and does not constitute disciplinary isolation.

General Statutory Authority: Neb. Rev. Stat. §§83-176, 83-178, 83-183, 83-4, 109 through 83-4,123.

Legal Citations: Wolff v. McDonnell, 418 U.S. 539 (1974)

Sandin v. Conner, 115 S.Ct. 2293 (1995).